

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/08/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.9765 OF 1998

G. Masilamani,
S/o. A. Govindan .. Petitioner

-Vs-

1. Joint Director of School Education,
(Secondary Education)
College Road, Nungambakkam,
Chennai 600 006.

2. Chief Educational Officer,
Cuddalore District,
Cuddalore.

3. District Educational Officer,
Virudhachalam,
Cuddalore District.

4. The Muslim High School,
rep. by its Correspondent,
M. Hajee M.I. Abdul Vadood,
Ayangudy 608 306,
Cuddalore District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.K. Chandru,
Senior Counsel for
Mr.K. Sridhar

For Respondents 1-3 : Mr. Sivashanmuga Sundaram
A.G.P.,

Respondent - 4 : Mr.K. Alagirisamy,
Senior Counsel for
Mr.R. Kannan

:J U D G M E N T

The petitioner was working as B.T. Assistant (Selection Grade) under the fourth respondent school, which is a private aided minority school. It appears that the petitioner on an earlier occasion protested against the action of the school on the question relating to appointment of Headmaster and even a civil suit had been filed. It is alleged that thereafter the school is having a vindictive attitude towards the petitioner. While the matter stood thus, some teachers including the petitioner jointly submitted a petition to the Chief Minister's cell alleging about the delayed payment of monthly wages, bonus and other dues. Such action of the petitioner and other teachers added fuel to the fire and gave rise to increased ire against the petitioner. Against a few of such teachers, departmental proceedings were initiated. Similarly a proceeding was also initiated against the petitioner. Subsequently, the petitioner was placed under suspension

which was challenged by the petitioner in W.P.No.17172 of 1997 and subsequently a charge-memo containing four charges was issued to the petitioner, which are to the following effect :-

□ 1. Thiru G. Masilamani, Rengarajan and Ramanujam teachers, have petitioned to the Chief Minister cell alleging that the payment of monthly salary annual increment of such other payments was not made in due time. The District Educational Officer, Virdhachalam, after having examined the accounts and records has come to a conclusion in his enquiry that the allegation in the petition was false.

2. Without giving details to Mailoham, Perumal, Subbiah, Thiagarajan and Kaliamoorthy and after getting their signatures, you have filed a writ petition against the school. The above five persons have informed us in writing that you have filed the writ petition by misusing their names. This is against the school.

3. You are teacher of 9th standard, without teaching lessons and by calling the girl students nearer you made astrological prediction and mischief by holding their hands. The school lost respect among girl students and their parents. Your action has brought a bad name.

4. You lodged complaint with the police stating that you were threatening and asked to sign in blank white papers, when we handed over the suspension order.□

The petitioner submitted his explanation denying the allegations made against him. In respect of Charge No.1 he submitted that since there was some delay in payment of pongal bonus and monthly salary, a representation has been made. In respect to Charge No.2, he has stated that the said writ petition has not been filed by him and has been filed by somebody, who was not at all related to him. He denied Charge No.3 and submitted that he was made to sign in blank paper. A departmental proceeding was thereafter held and enquiry was conducted on the allegations contained in Charge Nos.1 and 4. The enquiry officer found that those two charges have been established. Thereafter, an order was passed terminating the petitioner from service.

2. It is the case of the petitioner that such order of termination without prior approval from the competent authority, as envisaged under Section 22(1) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is illegal. It has been further submitted that principles of natural justice had been violated. It is further contended that the impugned order is in violation of Section 22(1) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. It has been further contended that the impugned order of termination is also vitiated by legal malice. It is also indicated that there was no breach of conduct as enumerated in Appendix II and ventilating genuine grievance and police complaint for personal protection cannot be characterised as misconduct warranting termination.

3. Counter affidavits refuting the contentions made in the writ petition have been filed on behalf of the respondents. Apart from justifying the action, it has been stated that in relation to Charge No.3, in the interest of justice the school authorities did not hold any formal enquiry with a view to protect the name of the institution as well as to protect the girl students. A plea has been taken that the school being a minority institution, writ petition would not be maintainable and at any rate the petitioner should not be reinstated in service.

4. At the time of hearing, the learned senior counsel appearing for the petitioner has contended that the alleged misconduct in Charge Nos.1 and 4 do not come within the misconduct as enumerated in Appendix II and even assuming that these allegations constitute some misconduct, punishment of termination from service against the petitioner who tried to ventilate his grievance is improper. This submission of the learned counsel for the petitioner appears to be justified. The alleged misconduct as enumerated in Charge Nos.1 and 4 by no stretch of imagination can be characterised as breach of conduct as enumerated in Appendix II. The allegations are not such which can be characterised as per-se misconduct. Even assuming that there is some truth in the allegations, the punishment of termination from service appears to be disproportionate.

5. In view of the above conclusion, in normal course, reinstatement in service would have been ordered. However, the submission of the learned senior counsel for the respondent No.4 that other serious lapses on the part of the petitioner, as reflected in charge No.3, cannot be lost sight of and it is a case where the management has lost confidence in the petitioner. It has been further indicated that since it was impracticable to hold an enquiry, particularly with a view to protect the fair name of the institution as well as the concerned girl students, the petitioner should not be reinstated in service.

6. The petitioner of course characterised such allegations as untrue. As observed by the Supreme Court in 1997(7) SCC 463 (UNION OF INDIA AND ANOTHER v. G. GANAYUTHAM) it may be impracticable to hold enquiry into such allegations at this distant point of time. On the other hand the submission of the learned counsel for the respondent is that the management has lost confidence in the petitioner and a direction regarding reinstatement would not be proper. It is to be kept in view that the respondent No.4 is a

minority institution and has got some leeway.

7. Having regard to all these aspects and keeping in view the peculiar facts and circumstances of the case and the principles enunciated in 1976 (II) LLJ 163 (EXECUTIVE COMMITTEE OF VAISH DEGREE COLLEGE, SHAMLI AND OTHERS v. LAKSHMI NARAIN AND OTHERS), the writ petition is disposed of with the direction to the fourth respondent to pay a consolidated sum of Rs.2,00,000/- as compensation within three months from the date of receipt of the order.

8. Subject to the aforesaid observations, the writ petition is disposed of. No costs.

Index : Yes

Internet : Yes

dpk/ksr

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